

### **Amendments To The Drawings**

The drawings were objected to as not including reference numerals "70" as indicated on page 11, line 14, and "72" as indicated at page 11, line 22.

The present amendment submits a red-line drawing of Fig. 10, with reference numerals "70" and "72" indicated thereon.

## REMARKS

Claims 1 - 14 are pending in the application. Concurrently filed herewith is a petition for a three-month extension of the period in which to respond to the Final Office Action dated December 8, 2004, to expire June 8, 2005.

### Correction of Claim Informalities

The present amendment attends to the informality objections of the examiner to the claims. The informalities in claim 1 are attended to by amendments that clarify and distinctly point out the structure of the rails having lateral side surface with first and second edges thereof and sitting of the pickets on the lateral side surface and attachment with fasteners at the first edge (first pickets) and opposing second edge (second picket), as discussed below. In claim 3, "the angle" of the rails is amended to "an angle". The amendment to claim 6 conforms the Markush claim language. Claim 9 recites "first rail and second rail" to provide antecedent basis for terms used in the claim.

### Traverse of Section 112 rejection

Claims 1 - 8 were rejected under Section 112, on the grounds that the limitation "the rails are restricted from pivoting" suggests that the rails are not rackable relative to the pickets. However, the structure of the claimed invention permit the rails to rack in a first plane while being restricted from pivoting in a second plane. Claim 1 is amended to clarify this relationship by reciting that the particular novel fastening of the rails to the pickets restricts the rails from pivoting laterally when moving the gate posts in opposing directions parallel to the longitudinal axis of the pickets. Particularly, claim 1 is amended to recite that during racking of the gate panel by moving the gate

posts in opposing directions parallel to a longitudinal axis of the second picket to orient the rails at an oblique angle relative to the first and second pickets to track the contour of the terrain, the fastening of the second picket on the second edge opposing the fastening of the first pickets on the first edge restrict the rails from pivoting laterally from the pickets. The rejection under Section 112 should be withdrawn.

### **Claimed Invention Structurally Novel Over *Cusack***

Claims 1, 3 - 9, and 14 stand rejected under 35 USC § 102( b) as anticipated by *Cusack*. *Cusack* describes a rackable picket fence of construction that differs structurally from the invention as claimed. In *Cusack*, pickets 32 pass through openings 28, 30 in the rails 16, 18. The pickets have lower apertures 34 and upper apertures 36. Bolts 42 pass through openings 38 (lower rail) and 40 (upper rail) in opposing side walls 22, 24 of the rails. The openings 38, 40 align with the respective lower apertures 34 and upper apertures 36 of the pickets.

#### **1. Claim 1 (Amended) Novel And Patentably Distinct Over *Cusack***

The present invention of a rackable gate structurally differs from the construction of *Cusack*, and such structural differences are novel over *Cusack*. Claim 1 as amended clarifies that the rails define a lateral side that has a first edge and a second edge which edges are spaced apart. The pickets sit on the lateral side. A plurality of first pickets fasten to the rails at the first edge. A second picket fastens at the second edge. The gate panel racks by moving opposing gate posts in opposite directions while the fastening of the second picket at the second edge opposing the fastening of the first pickets at the first edge restricts the rails from pivoting laterally.

Particularly, claim 1 recites novel structure for a rackable gate for a fence on terrain having a non-level contour. The rackable gate has a gate panel with spaced-apart rails that each define a lateral side and a first edge and a second edge of the lateral side. The first edge is spaced apart from the second edge. A plurality of spaced-apart parallel first pickets sit on the lateral side and are fastened thereto at the first edge. A second picket\ disposed parallel and spaced from an adjacent one of the first pickets sits on the lateral side of the rails and is fastened thereto at the second edge. A pair of opposing gate posts receive opposing distal ends the rails in openings. The distal ends of the rails are pivotally secured to the gate posts. This structure is entirely different from the structure described by *Cusack*. Particularly, *Cusack* lacks the opposing fastenings of first and second pickets that cooperates with the pivotably connected distal ends of rails for racking in a first plane and restricting pivoting in a second plane.

The novel structure provides a rackable gate that is readily assembled and installed. The gate panel racks to the contour of the terrain by moving the gate posts in opposing directions parallel to a longitudinal axis of the second pickets and thus orient the rails at an oblique angle relative to the first and second pickets to track the contour of the terrain. While racking, the fastening of the second picket on the second edge opposing the fastening of the first pickets on the first edge cooperatively restrict the rails from pivoting laterally from the pickets. Thus, the present novel structure permits racking in a first plane while restricting pivoting of the rails laterally in a second plane.

### **1. Claim 9 (Amended) Novel And Patentably Distinct Over *Cusack***

Claim 9 is also amended to distinctly set forth the structural elements of the subject matter of the invention of a rackable gate that readily adjusts to track substantially a slope of a terrain during

installation thereof in a fence while restricting the rails from pivoting laterally. The rails thus permit racking in a first plane while being restricted from pivoting into a second plane. Particularly as recited in the amended claim, the first pickets sit on the lateral side surface of the rails and fasten to the first edge of the lateral side. The second picket sits on the lateral side surface of the rails and fastens to the second edge of the lateral side. The fastening of the second picket on the second edge opposing the fastening of the first pickets on the first edge restrict the rails from pivoting laterally away from the pickets during racking. Such structure is novel over *Cusack*.

#### **1. Claim 14 (Amended) Novel And Patentably Distinct Over *Cusack***

Similarly, the method set forth in claim 14 is amended to set forth method steps involving structure that distinguishes over *Cusack*. Particularly, the claimed method provides a gate for tracking a sloped grade during installation of a fence over a terrain. The method involves disposing first and second rails parallel and spaced-apart, in which the rails each define a lateral side surface having opposing first and second side edges spaced-apart thereof. The first pickets sit on the lateral surface and are fastened at the first side edge to the pickets. A second picket sits on the lateral surface and is fastened at the second sided edge to the rails. The opposing longitudinally ends of the rails pivotally connect to gate posts. Moving the gate posts in opposing directions causes the gate to rack while the fastening of the second picket on the second edge opposing the fastening of the first pickets on the first edge restrict the rails from pivoting laterally from the pickets . The claimed method involving the assembly and manipulation of the novel structure of the rackable gate patentably distinguishes over *Cusack*.

### **Interview Requested**

The applicant welcomes an in-person interview with the examiner for the purpose of demonstrating an embodiment of the present invention, and to clarify other questions if any with the examiner.


### **Amendments To The Drawings**

The present amendment submits red-line drawing of Fig. 10 indicating reference numerals "70" and "72" as indicated at page 11, lines 14 and 22.

### **Summary**

In summary, it is believed that the present amendment responds fully to the issues outstanding in this application and that claims 1 - 14 (amended) patentably distinguish over the prior art of record and are in condition for allowance, and same is earnestly solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Carl M. Davis II', with a stylized flourish at the end.

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